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8 BEFORE THE INSURANCE COMMISSIONER
9 OF THE STATE OF WASHINGTON
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11 In the Matter of the Application
12 regarding the Conversion and
13 Acquisition of Control of Premera Blue
14 Cross and its Affiliates.

No. G 02-45

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16 TWENTY-FOURTH ORDER:
17 RULING ON USE OF ALASKA
18 DIVISION OF INSURANCE EXPERT
19 REPORTS
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27 The Alaska Interveners filed a motion asking that I review the Special Master's Order
28 on Alaska Interveners' Motion Re Alaska Division of Insurance Consultants' Reports. The
29 Special Master ruled that the Alaska Interveners may not introduce the consultant reports of
30 the Alaska Division of Insurance ("ADI") or call ADI consultants as witnesses at the formal
31 hearing. The basis of the Special Master's ruling is that the Alaska Interveners did not meet
32 the November 10, 2003, deadline for submission of expert reports. Because the reports were
33 not submitted and the Alaska Interveners could not project when they could be submitted, the
34 Special Master found that all of the other parties would be prejudiced by the introduction of
35 reports not subject to timely review and discovery, including the taking of the ADI experts'
36 depositions.

1 Since the time of the Special Masters' ruling, the date for the beginning of the formal
2 hearing has been moved from January 15, 2004, to March 29, 2004; however, the earlier
3 deadlines for submitting expert reports and conducting discovery have not been extended.¹
4 Although one might now be able to argue that the prejudice has been alleviated because of the
5 change in the schedule, I am not persuaded that the Alaska Interveners should be permitted to
6 introduce all of the ADI consultants' reports and testimony in contravention of the original
7 deadline. Even with the date of the hearing being extended, the schedule is still quite
8 demanding. The parties had completed discovery, which appears to have been substantial,
9 and were poised to begin to prepare pre-filed testimony when the hearing date was moved.
10 While there is now a hiatus in the schedule to allow for the possibility of amending the Form
11 A and conducting a supplemental review and discovery of on such amendments, the schedule
12 does not allow for the wholesale review and discovery of the ADI reports and the opinions of
13 the ADI consultants.
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16 This being said, I am cognizant of the fact that the reports, which were commissioned
17 by the ADI for the use of the ADI Director, could contain information and opinions that are
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22 ¹ The change in the Case Schedule was prompted by a request from Premera for
23 additional time to consider possible amendments to its Form A to address issues raised by the
24 OIC's and Interveners' consultants. The revised Case Schedule allows for limited discovery
25 on any amendments to the Form A. The revised schedule was agreed upon by all the parties.
26 Aware that the issue of the use of the ADI consultants and their reports was still pending
before me, the parties agreed that if depositions were to be taken of the ADI consultants, they
would conclude on February 23, 2004, at the same time of the conclusion of any supplemental
depositions required as a result of Form A amendments.

1 relevant and useful to my review of Premera's transaction.² I am also mindful that the effects
2 of the transaction upon Alaska and Washington may be interrelated, and I do not wish to
3 ignore issues that are being presented to the ADI Director if those issues appropriately could
4 have an impact on my review. However, it is not my role to "hear the Alaska case" in these
5 proceedings, as I explained in my Fourth Order: Ruling on Motions to Intervene. The Alaska
6 Director is conducting her own review of the transaction, and it is her responsibility to
7 determine under Alaska law what is in the public interest in Alaska.
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9 The issue for me, therefore, is to what extent and through what means can relevant and
10 useful information and opinions from the ADI reports be presented to me. As I stated above,
11 the Case Schedule cannot accommodate the wholesale introduction of the reports into these
12 proceedings. There are already 17 expert reports that have been submitted in these
13 proceedings, and at least that number of experts is expected to testify. Information and
14 opinions from the ADI reports unique or exclusive to the situation in Alaska are not the proper
15 subjects for this hearing. Information and opinions from the ADI reports that are simply
16 redundant of the reports already filed in this matter are unnecessary and cumulative.
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20 ² By way of example, the Alaska Interveners suggest that the ADI consultants may
21 have addressed the issue of allocation of the value of Premera between Washington and Alaska
22 if the conversion is approved. Because Premera operates non-profit health plans in both states,
23 the value of Premera to be distributed will be allocated between the states based upon some
24 formula or methodology. None of the parties or their experts thus far have addressed the issue
25 of what would be the proper allocation, reasonable range of allocations, or the reasonable
26 method or methods for determining allocation. If I and, ultimately, the Attorney General are to
determine if fair value has been preserved for the state of Washington, it would seem that we
would have to render some decision regarding an acceptable allocation should the conversion
be approved. I could envision that if such information is presented in the ADI reports, it could
form the basis of the presentation of evidence on allocation in this case, whereby the parties
may agree or disagree with the ADI's consultants' conclusions.

1 At this time the ADI has not made its consultants' reports public. From the record in
2 this case, it appears that Premera has had, at least, preliminary drafts of the ADI reports since
3 October 22, 2003. There is nothing in this record, however, to indicate whether the other
4 parties in this case have received copies of the ADI reports. Presumably, the authority to
5 grant permission for the ADI reports to be disseminated lies with the ADI Director or her
6 staff. I have no independent knowledge nor have I been given any knowledge as to the
7 contents of the ADI reports.
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9 Because I believe that there could be information and opinions in the ADI reports that
10 are relevant to my review of Premera's proposed conversion under Washington law and my
11 consideration of the public interest in Washington, I will permit use of the ADI reports under
12 certain conditions. Any party may file a motion with Judge Finkle by January 26, 2004,
13 requesting permission to introduce an ADI report or section of an ADI report, which could
14 include testimony related thereto by an ADI consultant or an already identified consultant of a
15 party. The reports to be relied upon shall not be preliminary reports but those that the ADI
16 considers final. The motion must specifically identify a report or section of a report, and
17 copies of the identified material must be made available, under appropriate confidentiality
18 designations if necessary, to the Special Master and the other parties. The motion must also
19 identify the consultant that may testify regarding the identified material. Only those reports or
20 sections of reports that are relevant and useful to my review should be identified, and the
21 motion must explain why this is so. Consequently, information and opinions that are unique
22 or exclusive to Alaska should not be identified. Information and opinions that are redundant
23 or cumulative of the reports that have already been submitted in this proceeding should not be
24 identified. The parties are cautioned to be judicious in their selections. Objections to any
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1 designation may be submitted to the Special Master by February 2, 2004. A ruling will be
2 issued as promptly as possible so that if additional depositions are necessary, they can be
3 completed by February 23, 2004. The Special Master will follow the guidelines set forth in
4 this Order in determining whether a party should be permitted to introduce an ADI report, or
5 section of an ADI report, and testimony related thereto.
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7 In addition, I will invite the Alaska Director of Insurance or one of her staff, as she
8 so directs, to inform me through a written statement of any information that the ADI believes I
9 should be aware of in considering Premera's proposed conversion. I believe it is appropriate
10 for the domestic regulator to afford a sister state, which is affected by a transaction as
11 significant as Premera's proposed conversion, the opportunity to present its concerns, if any. I
12 understand that this statement would be considered hearsay and could contain information that
13 is ultimately not relevant to my review. However, I will take that into account in reviewing
14 any statement from the ADI, should it desire to submit one, and give such statement the
15 appropriate weight in considering all of the evidence.
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18 **IT IS SO ORDERED** this 31st day of December, 2003.
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MIKE KREIDLER
25 INSURANCE COMMISSIONER
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